

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 06-0304P

Penalty

For the Period: 2003 - 2005

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC § 6-8.1-5-1(b); 45 IAC 15-5-3(b); 45 IAC 15-11-2

The taxpayer protests the assessment of a penalty.

STATEMENT OF FACTS

The taxpayer is a distributor of building materials that operates in numerous states. The taxpayer was audited and as part of the audit a penalty was assessed. The taxpayer protested the proposed penalty assessment, and an administrative hearing was held. This Letter of Finding is the result of that hearing. More facts will be provided below.

I. **Tax Administration** – Penalty

DISCUSSION

Before examining the taxpayer's protest, it should be noted that the *taxpayer* bears the burden of proof. IC § 6-8.1-5-1(b) states in pertinent part:

The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

The Indiana Administrative Code also states "[t]he burden of proving that a proposed assessment is incorrect rests with the taxpayer...." 45 IAC 15-5-3(b).

The taxpayer protests the imposition of a negligence penalty. The taxpayer states:

We respectfully request that the penalties noted in this notice be waived. Several years ago we put new people and procedures in place whereby we are now doing a much better job of reporting and remitting the proper sales & use taxes.

And further, in a later faxed correspondence, the taxpayer notes that it “began implementing” various “improvements to our processes and procedures beginning in late 2001/early 2002.” With regards to sales tax, taxpayer states that it uses software “to ensure that tax rates are correct for all state and local taxing jurisdictions.” Taxpayer also notes it outsources “the maintenance of our tax exemption certificates to [Company X], who not only scans and maintains electronic copies but also reviews them to verify that they meet individual state requirements.”

Regarding use tax, taxpayer states it “had a state-by-state matrix developed to better educate our accounts payable personnel regarding what purchases are taxable.” Taxpayer also “implemented a new accounting procedure which requires any invoice for which tax was not charged and should have been be given to the accounting department so that the tax may be manually accrued and remitted.”

45 IAC 15-11-2(b) states (in part):

“Negligence” on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer’s carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence.

45 IAC 15-11-2(c) is also of import, and states that the Department “shall waive the negligence penalty ... if the taxpayer affirmatively establishes that the failure ... was due to reasonable cause and not due to negligence.” 45 IAC 15-11-2(c) notes:

In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty....

The “improvements” that the taxpayer began in 2001 and 2002 “demonstrate that it exercised ordinary business care” and that the penalty should be waived.

FINDING

The taxpayer’s penalty protest is sustained.

DP/BK/DK October 20, 2006